



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 22, 1996

Mr. Robert A. Schulman
Schulman, Walheim, Heidelberg & Acevedo, Inc.
745 E. Mulberry, Suite 700
San Antonio, Texas 78212

OR96-1218

Dear Mr. Schulman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100376.

The Christoval Independent School District (the "school district") received a request for thirteen categories of documents relating to a teacher non-renewal hearing. You claim one category of the requested information is excepted from disclosure under section 552.101 of the Government Code. That request states:

4. All 1995-96 performance observations, appraisals, and evaluations of any and all teachers who performed at or below the summative level Mr. Wallace performed on his 1995-96 appraisals. [Please feel free to redact the teachers' names and any other identifiable information from these documents].

We note that the documents you have submitted to this office for review are not responsive to this request; instead, they are documents concerning Mr. Wallace. We assume that you intended these documents to be a sample of the type of information for which the school district is claiming an exception.¹

¹We note that chapter 552 of the Government Code imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.-Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). You claim that the request was not received by the school district until May 28, 1996, despite the fact that you, as an attorney for the district, received the request on May 23,

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. In the last legislative session, Senate Bill 1 was passed, which added section 21.355 to the Education Code. Section 21.355 provides, "Any document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). We enclose a copy of Open Records Decision No. 643 (1996) for your information. In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the documents submitted to this office are confidential under section 21.355 of the Education Code. Therefore, pursuant to section 552.101 of the Government Code, the school district must withhold these documents.

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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(Footnote continued)

1996. We need not determine whether the request was received timely, as section 552.101 is a compelling reason to overcome any presumption of openness.

Ref.: ID# 100376

Enclosures: Open Records Decision No. 643 (1996)
Submitted documents

cc: Mr. Kevin F. Lungwitz
Staff Attorney
Texas State Teachers Association
316 West Twelfth Street
Austin, Texas 78701
(w/o submitted documents; w/ Open Records Decision No. 643 (1996))